FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.621 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr. Prakash Naik for the Applicant.
Mrs. M.H.Mhatre, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 23/2/2006.

P.C.

1. This application impugns an order dated 19.11.2005 passed by the Addl.Sessions Judge, Mumbai rejecting an application for discharge. Grievance made by the applicant is that the police had wrongly filed a charge-sheet under Section 304 Part II though the ingredients of the said section are not attracted to the facts of the present case. The applicant is an Architect in respect of the building Pravin Smriti which had collapsed on 16.8.1997 in which two persons were

lost their life. It appears from the record that the application was made for clear discharge and by impugned order discharge is refused on the ground that prima facie case is made out and therefore, the applicant can not be discharged. In the impugned order, it is nowhere mentioned that the offence under Section 304 Part II has been made out. The Sessions Court is not bound by the sections that are mentioned by the police in the charge sheet and while framing charge, the Sessions Court has to apply its mind judicially and consider the nature of the offence in respect of which there exist material for framing charge. Admittedly, charge has not been framed. In the circumstances, the trial court is directed to frame a charge after carefully considering the nature of the offence and the material against the present applicant. Needless to say that if the applicant aggrieved by nature of the charge, he will have liberty to file an application

challenging the said order. The contention in the application that there is no material to frame charge under Section 304 Part II to be left open to be agitated in such revision application. Application stands disposed off in the aforesaid terms.

(R. S. MOHITE, J.)